

**REMARKS****Restriction requirement**

In the Office Action of September 14, 2005 the Examiner asserts, in a restriction requirement, that the present application contains claims directed to two distinct inventions, Invention I (Claims 1-27) and Invention II (Claims 28-29). The Examiner further asserts that the present application contains claims directed two distinct species, Species I (Claims 1-15) and Species II (Claims 16-27).

Applicants request that the Examiner reconsider the requirement for restriction as discussed below.

**Restriction directed to two distinct inventions:**

While Applicants concur with the Examiner's finding that Invention I and Invention II are patentably distinct, Applicants traverse the restriction requirement because the Examiner improperly issued the requirement. Invention I and Invention II are related because, as conceded by the Examiner, they each pertain to the same class. According to MPEP § 808.02, a restriction of distinct, but related inventions is proper only if (A) the inventions are classified separately, (B) have a separate status in the art, or (C) require different fields of search. In the present case, the (A) condition is not met because Invention I and Invention II are classified in class 385. The (B) condition is not met because the Examiner has not provided an explanation indicating a recognition of separate inventive effort by inventors. See MPEP § 808.02(B). According to MPEP § 808.02 (B), "separate status in the art may be shown by citing patents which are evidence of such separate status, and also of a separate field of search." Applicants submit that no patents were cited by the Examiner as evidence of separate status and of a separate field of search. The (C) condition is not met because a single search of the art in the class 385 would yield pertinent art for both groups of claims. Because these conditions are not met, the restriction requirement is improper and should be withdrawn.

**Restriction directed to two distinct species:**

Applicant submits that 35 U.S.C. § 121 authorizes, but does not require, the USPTO to restrict an application to one invention if two or more independent and distinct inventions are claimed in one application. In view of the related filed of technology of both species

and in view of the expenses that would be imposed upon the Applicant by multiple patent applications and multiple patents, it is submitted that restriction requirements should be issued only when absolutely necessary.

Therefore, Applicants submit that the restriction requirement set forth in the Office Action of September 14, 2005 is improper. As such, the Examiner is respectfully requested to withdraw the restriction requirement. However, as required under 35 USC § 121, the Applicants provisionally elect Claims 1-15.

Additionally, Applicants expect the Examiner to use a consistent test with respect to what matters are obvious and what matters are unobvious throughout the prosecution of this application. Because the Examiner is adopting a particular standard for patentability in this case in terms of the election/restriction requirement, Applicants will expect that the same test be used throughout the prosecution of this application if the Examiner does not withdraw the election/restriction requirement made in the official action.

The traversal of the restriction requirement and the remarks regarding the traversal are being submitted without prejudice. Neither the traversal of the restriction requirement nor the remarks regarding the traversal shall be interpreted as disputing the Examiner's finding that Invention I and Invention II are patentably distinct.

It is submitted that the application is in condition for allowance. Allowance of the application at an early date is solicited.

Conclusion

In view of the above, allowance of the pending claims is respectfully solicited.

The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 12-0415. In particular, if this response is not timely filed, then the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136 (a) requesting an extension of time of the number of months necessary to make this response timely filed and the petition fee due in connection therewith may be charged to deposit account no. 12-0415.

I hereby certify that this correspondence is being deposited with the United States Post Office with sufficient postage as first class mail in an envelope addressed to Commissioner for Patents P.O. Box 1450, Alexandria, VA 22313-1450 on

October 14, 2005  
(Date of Deposit)

Shannon Tinsley  
(Name of Person Signing)

STinsley  
(Signature)

October 14, 2005  
(Date)

Respectfully submitted,

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